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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,721	12/08/2003	Marc David Levenson	903-021	3958
24295	7590	05/27/2004		
Rodney T. Hodgson, Ph.D. 822 Pines Bridge Rd. Ossining, NY 10562			EXAMINER BOUTSIKARIS, LEONIDAS	
			ART UNIT 2872	PAPER NUMBER

DATE MAILED: 05/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/730,721	LEVENSON, MARC DAVID
<b>Examiner</b>	<b>Art Unit</b>	
Leo Boutsikaris	2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 08 December 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-19 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-3, 10-12 and 19 is/are rejected.

7)  Claim(s) 4-9 and 13-18 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 08 December 2003 is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a))

\* See the attached detailed Office action for a list of the certified copies not received

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

## **DETAILED ACTION**

It is noted that claims 12-20 have been wrongly numbered, and they should have been numbered as 11-19 instead. In the following, the latter enumeration is followed.

### ***Claim Objections***

Claims 2-9 are objected to because of the following informalities: all the above claims are apparatus claims and they all depend from claim 1 which is a method claim. It is suggested that the word "apparatus" in said claims is changed to "method". Appropriate correction is required.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3, 10-12, 19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 15 of U.S. Patent No. 6,661,957.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1 and 15 of the '957 patent include all the limitations of claims 1-3, 10-12 and 19, respectively, of the present application including the limitation that at least one hole contains a Raman amplifying gas, i.e., an infrared optically active material, that is in the interior of the hole, and thus it is also adsorbed on the interior surface of the hole.

*Allowable Subject Matter*

Claims 4-9, 14-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and if claims 4-9 overcome the objections set forth supra.

Claims 1-19 are allowable over the prior art of record for at least the reason that even though the prior art discloses the use of holey fibers as evanescent field devices for sensing chemical elements, the prior art fails to teach or reasonably suggest, regarding claims 1-9, a method comprising the steps of introducing an optically active material into at least one hole of the optical fiber, wherein the optically active material is adsorbed on an interior surface of the hole, and detecting the interaction of the laser beam with the material adsorbed on the interior surface of the hole, and regarding claims 10-19, an apparatus comprising an optical fiber having a core region containing a plurality of holes elongated in the direction of the axis, wherein at least one hole contains optically active material adsorbed on the interior surface of the hole, as set forth by the claimed combination.

Monro (CLEO article) and Broderick (US 6,577,801) disclose a use of holey fibers having elongated holes in the cladding as gas sensors, e.g., for sensing methane, by studying the interaction of light with gases and liquids through evanescent field effects.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Leo Boutsikaris whose telephone number is 571-272-2308.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Leo Boutsikaris, Ph.D.  
Patent Examiner, AU 2872  
May 21, 2004

